

BEFORE THE
GOVERNING BOARD OF THE
CALEXICO UNIFIED SCHOOL DISTRICT
IMPERIAL COUNTY, CALIFORNIA

In the Matter of the Reduction in Force
Proceeding Involving Those Calexico
Unified School District Certificated
Employees Impacted by Governing Board
Resolution No. 31-03-11,

OAH No. 2011030604

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Calexico, California, on April 29, 2011.

Clifford D. Weiler, Attorney at Law, represented the Calexico Unified School District.

John W. Breeze, Attorney at Law, represented respondents. He was assisted by Ernie Bristow, a UniServe Director with the California Teachers Association.

The matter was submitted on April 29, 2011.

FACTUAL FINDINGS

The Calexico Unified School District

1. The Calexico Unified School District is located in Imperial County. The District serves approximately 9,200 Kindergarten through 12th grade students. The District maintains two comprehensive high schools, an adult program, a 9th grade academy, two junior high schools, and seven elementary schools. The District employs approximately 450 certificated employees. The District's currently operating budget is about \$77 million. Ninety-three percent of the District's annual budget pays employee salaries and benefits.

2. The District is governed by an elected five-member Board of Education (the Governing Board). Richard Fragale is the Acting Superintendent of Schools and the District's Chief Executive Officer. Acting Superintendent Fragale is assisted by an administrative staff that includes Teresa Estrada, the Director of Human Resources. Ms. Estrada is a member of the Superintendent's Cabinet.

The Fiscal Crisis

3. After Proposition 13 was implemented in 1978, public schools have obtained financing primarily from the State of California. A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event that is supposed to occur each year in late June. Before then, a school district's governing board, which has the duty to produce a balanced budget and to file an annual budget with the County Office of Education, must take steps to make certain that financial ends will meet if the worst-case financial scenario develops.

California's recent budget problems have had a crippling impact on the Calexico Unified School District and other public school districts. If the District is unable to meet its financial obligations, a "negative" certification will be assigned that will authorize the Imperial County Office of Education to intervene and take over the District's operations.

With regard to the budget for the 2011-12 school year, the District has projected an \$11 million shortfall. The District currently has a qualified certification on file with the Imperial County Department of Education, which means that the District may not be able to meet its financial obligations this fiscal year or in the next fiscal year.

The District's Response

4. In response to the anticipated budgetary shortfall for the 2011-12 school year, the District carefully reviewed its operations. Several cost-cutting matters were considered; expenses were frozen for the 2010-11 school year; categorical funds were maximized; the District sought to obtain financial relief for damages caused by the 7.2 magnitude earthquake occurring on Easter 2010; and the District is appealing from an attendance penalty imposed by the State of California resulting from the District's inability to provide services to students immediately after the 2010 earthquake as a result of damage done by that tremor. Declining student enrollment was not a factor in the Governing Board's very difficult decision to reduce certificated staffing as one of several methods required to balance its budget for the 2011-12 school year.

Before the Governing Board's meeting on March 8, 2011, Acting Superintendent Fragale recommended to the Governing Board that 33.2 full-time equivalent certificated employee positions be eliminated for the 2011-12 school year and that a corresponding number of certificated employees be given notice that their services would not be required for the 2011-12 school year.

5. On March 8, 2011, following Acting Superintendent Fragale's recommendation, the Governing Board adopted Resolution No. 33-01-11. It provides:

WHEREAS, because of financial realities such as budget and revenue considerations state-wide and the resulting revenue limitations to this school district and financial constraints resulting from revenue being insufficient to maintain current levels of programs and services including particular kinds of certificated services, and because of the desire and need to reassess educational priorities, and it being necessary to commence implementing program changes in a timely fashion within the current structure of the law, this District's Governing Board determines that it is in the best interest of the District and the welfare of the schools and the pupils thereof, to commence certificated layoff proceedings to reduce particular kinds of services ("PKS") as hereinafter enumerated and to reduce the corresponding number of certificated staff no later than the beginning of the 2011-2012 school year;

WHEREAS, the cause of this reduction in certificated services is not the separate statutory basis involving declining average daily attendance during either of the past two years;

WHEREAS, this discontinuance and reduction of certificated services shall result in layoffs of certificated personnel in accordance with Education Code sections 44955 and 44949 which provide a process whereby particular decisions, actions and notifications must be undertaken beginning no later than March 15 of each school year regarding layoffs of certificated personnel in order to reduce the number of certificated staff, and this Board desires to reduce certificated staff as permitted by law;

WHEREAS, this Governing Board desires to discontinue and reduce the particular kinds of certificated services as listed in Exhibit A, attached, and to that extent of full time equivalents ("FTEs") not later than the beginning of the 2011-2012 school year (in addition to the release of temporary certificated employees and/or the expiration of their contracts without renewals or re-issuances);

WHEREAS, in the opinion of the Governing Board, it will be necessary as a result of the discontinuances and reductions of these particular kinds of services reflected in Exhibit A to decrease the number of certificated permanent and/or probationary employees by a corresponding number of full-time equivalent positions;

WHEREAS, in determining the extent of staff FTE reductions and services to be discontinued and reduced, as noted in Exhibit A, the Governing Board has considered all assured and/or known attrition as of this time to the extent required by law (including but not limited to resignations and retirements received and to be effective not later than the close of this current school year, non-reelections of certificated employees, if any, for reasons unrelated to these discontinuances and reductions of services, and the release of temporary certificated employees and the expirations of their contracts), so that the total referenced above and in Exhibit A has already accounted for such attrition; but for that attrition, this Board would have found it necessary to discontinue or reduce additional particular kinds of certificated services and/or full time equivalents;

NOW, THEREFORE BE IT RESOLVED,

DETERMINED AND ORDERED by this Governing Board, as follows:

1. All of the above recitals are true and correct;
2. The particular kinds of services as listed in Exhibit A are hereby to be and will be discontinued and reduced and otherwise eliminated to the described extent not later than the beginning of the 2011-2012 school year, within the meaning of Education Code section 44955, subdivision (b);
3. It is the opinion of this Governing Board, in view of the reductions of these particular kinds of services, that it is necessary to decrease the number of permanent and/or probationary employees serving in positions requiring certification qualifications within this school district at the close of this school year by a

corresponding number of full-time equivalent positions as set forth within Exhibit A, and that such decrease in number of certificated staff be implemented by the termination of employment of certificated employees above and beyond attrition and the termination or expiration of employment of temporary and substitute employees;

4. Due to the discontinuances and reductions of particular kinds of services set forth herein, the legal number of employees of the District, pursuant to Education Code Section 44955, shall not be reemployed for the 2011-2012 school year;

5. Subject to requirements (if any) within the Educational Employment Relations Act, that for purposes of “competency” as to “bumping” (displacement) rights within the meaning of Education Code section 44955(b) and as to reemployment rights within the meaning of Education Code sections 44956 and 44957, to the extent such might apply, “competency” shall be based upon the following: possession and current filing of a preliminary or clear credential for the subject matter into which the employee would bump for the 2011-2012 school year or be reemployed;

6. For purposes of seniority tie-breaking criteria within the context of layoff and reemployment within the meaning of Education Code section 44955, subdivision (b) (third paragraph), section 44846 (second paragraph), section 44956 and section 44957, the Governing Board determines that seniority ties shall be broken in accordance with the criteria listed within Exhibit B, said criteria being based solely upon the current needs of the District and the students thereof;

7. The Acting Superintendent or the Acting Superintendent’s designee(s) is(are) instructed to take the steps necessary pursuant to the Education Code including, in part, sections 44955 and 44949, to implement the above and to reduce the certificated staff as set forth hereinabove;

8. The actions of this Governing Board will not, in any way, be considered to prejudice the rights of any certificated employee to whom notice will be given of the Acting Superintendent's recommendations of layoff, should any employee request a hearing to contest this matter and a recommended decision of an administrative law judge be presented to this Board for consideration.

Above is as adopted by the Governing Board of the Calexico Unified School District at a special meeting held on March 8, 2011, in Calexico, Imperial County, by the following vote:

Ayes: Trustee; Duarte, Aguilar and Valenzuela

Nays: Trustee; Romo, Kim

6. Exhibit A, which identified the particular kinds of services and full time equivalents, provided:

IDENTIFICATION OF
PARTICULAR KINDS OF SERVICES (PKSs)
AND
FULL TIME EQUIVALENCIES (FTEs)
TO BE DISCONTINUED OR REDUCED NOT LATER THAN THE BEGINNING OF
THE 2011-2012 SCHOOL YEAR

<u>Particular Kind of Service</u>	<u>Discontinuance or Reduction</u>	<u>Full time Equivalents</u>
Assistant Principal Services	discontinuance	5.0
Assistant Principal/Coordinator of Academics and Instruction/		
Assistant Principal Services	discontinuance	1.0
Director of Special Education and Guidance Services	reduction	0.2
Kindergarten through sixth grade teaching services	reduction	1.0

Biology, high school, teaching services	reduction	1.0
Counseling services (excludes 1.0 migrant program counselor services and 1.0 student well-being facilitator services)	reduction	7.0
Physical education, junior high school, teaching services	reduction	1.0
English teaching services, high school	reduction	1.2
English Language Arts (ELA) high school teaching services	reduction	1.2
CAHSEE preparation, high school, teaching services	reduction	0.6
Math (foundational) high school teaching services	reduction	1.0
Math (foundational) teaching services, De Anza	reduction	2.0
Math (foundational) junior high school teaching services	reduction	2.0
Special education teaching services mild/moderate, special day class	reduction	2.0
School psychologist services	reduction	1.0
Physical science, eighth grade teaching services	reduction	1.0
Agriculture Biology/agriculture science teaching services	reduction	1.0
Spanish teaching services	reduction	1.0
Spanish teaching services, Grade 9*	reduction	1.0*

Home instruction teaching services*	reduction	1.0*
Special education teaching services mild/moderate, special day class*	reduction	1.0*
TOTAL FTE		33.2

* *Inclusion within this Resolution of these services which are being provided by certificated employees who were previously laid off, is not intended to grant those individuals who are impacted any rights greater than provided by law, nor to nullify and provisions within each impacted individual's temporary employment contract, nor to supersede any other action by this Board to release or otherwise terminate the services of any impacted individual, nor to extend the pre-existing rights to reemployment as contained in Education Code sections 44956 (permanent) and 44957 (probationary).*

7. Exhibit B, which set forth the tie-breaking criteria, provided:

CRITERIA FOR BREAKING SENIORITY TIES

Subject to requirements (if any) within the Educational Employment Relations Act, this Governing Board determines, based solely on the needs of this District and the students of this District, that seniority ties within the meaning of Education Code sections 44955, subdivision (b) (third paragraph) and section 44846, shall be resolved by applying the following criteria:

The following rating system shall be applied in determining the order of termination of certificated employees, such that a tie will be broken in favor of the employee with a greater number of total points:

- A. Clear Professional, Standard, or General Teaching Credentials. Rating: +3 points per credential
- B. Preliminary Teaching Credentials. Rating: +2 points per credential

- C. Supplementary Authorization, issued by the California Commission on Teacher Credentialing: Rating: + 1 point per area of supplementary authorization
- D. Earned degrees beyond the BA/BS level. Rating: +1 point per degree
- E. Credentials and experience to teach in a special categorical program (e.g., bilingual, special education). Rating: +1 point per credential, +1 point per year of experience
- F. Complete years of teaching experience in any California school district under a full credential. Rating: +1 point per year
- G. Number of complete years of service in the District in a position requiring an administrative services credential. Rating: +1 point per year

The above-referenced determinations shall be based upon information and data which exists in the District's possession and within the employee's personnel file as of the date of this Resolution.

TIE-BREAKING PROCEDURE FOR EQUAL POINT TOTALS

In the event that a tie still exists following application of the above criteria, the District will then break ties by utilizing a lottery.

8. Resolution No. 33-03-11 did not contain a "skipping" provision under Education Code section 44944, subdivision (d)(1), authorizing the retention of a junior employee over a more senior employee on the basis that the junior employee possessed special training or experience necessary to teach a particular course of study that a more senior employee did not possess.

As specifically noted in the Resolution No. 33-03-11, the Governing Board "considered all assured and/or known attrition as of this time to the extent required by law (including but not limited to resignations and retirements received and to be effective not later than the close of this current school year, non-reelections of certificated employees, if

any, for reasons unrelated to these discontinuances and reductions of services, and the release of temporary certificated employees and the expirations of their contracts) . . .” Thus, the total number of particular kinds of services referred to in Exhibit A already accounted for such attrition as existed on March 8; but for that attrition, this Board would have discontinued or reduced additional particular kinds of certificated services and/or full time equivalents. Attrition included the retirements of Juan Orduna, a Math/Calculus instructor who is certified to teach AP classes, and the retirement of Ray Alvarado, a Physical Education instructor. The Governing Board accepted Mr. Orduna’s and Mr. Alvarado’s applications for retirement of these individuals before March 8, 2010.

9. On March 10, 2010, two days after the Governing Board adopted the resolutions referred to herein, Sabino Camacho, an General Science and Earth Science instructor who teaches Earth Science under a discretionary waiver, submitted his application for retirement.

10. Before March 15, 2010, the Governing Board was unaware that Norma Garcia, an elementary school teacher, Maria C. Martinez, an elementary school teacher, and other credentialed employees intended to retire. Not one of these individuals submitted a retirement application before March 15, 2011, the date on which the District was required to serve preliminary layoff notices.

The Particular Kinds of Services

11. The kinds of services identified in Resolution No. 33-03-11 were services that could be reduced lawfully under the Education Code. The adoption of Resolution No. 33-03-11 was neither arbitrary nor capricious; it was well within the Governing Board’s discretion. No particular kind of service was lowered to a level below that mandated by state or federal law. Resolution No. 33-03-11 was related solely to the economic crisis and the Governing Board’s duty to balance the budget.

The District’s Seniority List

12. The District maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees retire, resign, or otherwise become separated from service with the District. The seniority list is a spreadsheet that is organized from the most senior credentialed employee to the most recently hired credentialed employee. The spreadsheet contains the school site where the employee provides certificated services, the employee’s status (permanent or probationary), the employee’s assignments, the grade taught, the employees name, the number of full time equivalent services provided by the employee, the employee’s seniority date (the first date of paid probationary service), the employee’s English Language Learner authorization, the employee’s credential(s), and any supplemental authorization(s).

13. The District encourages credentialed employees to review the seniority list and to provide staff with updated information concerning new credentials and authorizations as

soon as possible to enable the District to make assignments and reassignments in an appropriate manner.

The Issuance of Preliminary and Precautionary Layoff Notices

14. Using the updated seniority spreadsheet, Resolution No. 33-03-11, and the tie-breaking, Ms. Estrada and District staff identified those certificated employees who should receive preliminary layoff notices and those who should not. Whenever an employee was tentatively identified as being in line to receive a layoff notice, that employee's seniority and credentials were carefully examined to determine if that employee could "bump" into a position held by a more junior employee. Before March 15, 2011, 25 certificated employees were served with preliminary layoff notices and other required documents. Of these, Isaac Murillo Estrada, Gerado G. Roman, Glenn F. Sarot (0.2 FTE), Analy M. Torres, and Gabrielle E. Williams Ballesteros did not request a hearing.

All prehearing jurisdictional documents were met.

15. To take into account the possibility of error, the District issued "precautionary layoff notices" to three certificated employees who provided the kinds of services that were being reduced and who might be impacted by the layoff proceeding. The District carefully examined the seniority and competency of these employees before issuing precautionary layoff notices. Before March 15, 2011, precautionary layoff notices and other required documents were served upon Maura Perez, Carmen Moncada, and Vanessa Santillanes. These individuals did not request a hearing.

All prehearing jurisdictional requirements were met.

The Administrative Hearing

16. On April 29, 2011, the record in the reduction in force proceeding was opened. Jurisdictional documents were introduced. The caption was amended. Opening statements were provided. Sworn testimony was taken and documentary evidence was received. Ms. Estrada testified about the District, its funding, the impact of California's financial crisis upon the District and its operations, the manner in which the District was attempting to remedy the problem, Acting Superintendent Fragale's recommendations to the Governing Board, the Governing Board's adoption of the resolutions, how attrition was considered in the adoption of those resolutions, how bumping worked, and why the services of two teachers with multiple subject teaching credentials were being terminated when only one elementary teaching PKS was being reduced and why the services of a social science teacher was being terminated when the PKS resolution did not mention the reduction of service for social science. The two elementary school employees and the social science instructor were bumped by assistant principals, each of whom had more seniority than these employees and each of whom was credentialed and competent to provide the services in the positions being held by more junior employees.

17. Eric Lopez, a Biology teacher with a seniority date of September 1, 2004, is qualified to teach 9th grade General Science and Earth Science if a Governing Board waiver were granted. Thus, he could fill the Science/Earth Science position being vacated by Mr. Orduna, who retired on March 10, 2011, before layoff notices had to be issued, since the Governing Board did not consider that attrition. However, the issuance of a waiver to teach Earth Science is discretionary with the Governing Board and whether the Governing Board should grant that waiver is not an issue that can be resolved in this layoff proceeding.

18. Ms. Estrada testified that Claudia Meza (seniority date September 14, 2009) and Pollavet Hansanugrum (seniority date September 14, 2009) were credentialed and competent to teach a Math/Calculus class that was being taught by Mr. Orduna; Ms. Estrada was not aware which of those employees was considered to be the most senior teacher under the District's tie-breaking criteria. Neither Ms. Meza nor Mr. Hansanugrum is currently credentialed to teach AP mathematics. Further, the Governing Board considered Mr. Orduna's retirement before reaching the decision to reduce 1.0 FTE in high school Math, so there is no vacant position for either of them to fill.

19. Lorena D. Rodriguez, a Physical Education teacher with a seniority date of September 28, 2009, is credentialed and competent to teach the Physical Education position that Mr. Alvarado held, except that the Governing Board considered Mr. Alvarado's retirement before reaching the decision to reduce 1.0 FTE in junior high school Physical Education, so there is no vacant position for her to fill.

The Reduction in Force Proceeding

20. The adoption of Resolution No. 31-03-11 was the result of a budgetary crisis, not a decline in attendance; it was enacted in good faith; it was in the best interest of the District and its students given the District's present circumstances. The District complied with all jurisdictional prerequisites. The District used seniority, credentials, and competence as the basis for "bumping" junior employees, and the District retained the services of more senior, competent and appropriately credentialed employees to provide services currently being provided by more junior employees.

LEGAL CONCLUSIONS

Statutory Authority - Reduction in Force Proceedings

1. Education Code section 44949 provides in part:
 - (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the

reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

. . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils

thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds . . .

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. . . .

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified . . . and no probationary employee shall be deprived of his or her position for cause other than as specified . . .

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of

the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render . . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be

retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

The Reduction of Particular Kinds of Services

4. A school board may determine whether a particular kind of service should be reduced or discontinued, and it cannot be concluded that the governing board acted unfairly or improperly simply because it made a decision it was empowered to make. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.) A school board's decision to reduce or discontinue a particular kind of service need not be tied in with any statistical computation. It is within the discretion of a school board to determine the amount by which it will reduce or discontinue a particular kind of service as long as the school district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

Competence

5. The Education Code leaves to a school board's discretion the determination of whether an employee must also be competent to be employed in a vacant position in addition to possessing seniority. The term "competent" relates to an individual's specific skills or qualifications, including academic background, training, credentials, and experience, but it does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.)

Attrition

6. "Positively assured attrition" is attrition which has actually occurred and it is distinguished from "potential attrition" which may be anticipated but is still unknown. As noted in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, at pages 634-635, courts previously held that when terminating certificated employees because of a decline in a school district's average daily attendance (ADA), a district was required to consider all positively assured attrition; however, in *San Jose* the terminations were the result of the reduction of particular kinds of services (PKS), not ADA. The *San Jose* court described this as "an issue of first impression." The appellate court considered the previous ADA decisions and the language of the statute in reaching the conclusion that a district need not consider attrition occurring after March 15. The court reasoned that it is within a district's discretion, subject to the minimum level required by law, to determine the extent to which a reduction of services was deemed necessary and proper under the circumstances. The decision had to be made at the time of the final notice. In PKS cases, the determination of the amount by which a service is to be reduced is the determination of the number of positions to be eliminated by statute. In making a final decision on PKS reductions, the extent to which the services are reduced inherently determines the number of positions that remain. If a service is to be eliminated, for example, it is obvious that it is unnecessary to consider attrition in any way. (*Ibid.*, at 636.)

This aspect of the *San Jose* decision remains unchallenged. It supports the District's position in this matter. Attrition occurring after March 15 need not be considered in a layoff proceeding.

Information Filed after March 15

7. A credential recorded with the County Superintendent after March 15 cannot be used to assert bumping or reassignment rights. The practical reason for this rule is that layoff notices must be given, if at all, by March 15 to effect a reduction in teaching staff for the ensuing school year. Permitting a teacher to continue employment by reason of a credential filed after March 15 precludes a district from serving a layoff notice to a junior teacher. This circumstance would result in the board being forced to retain an extra teacher when the entire purpose of the layoff procedure is to allow the reduction of staff positions

because there are fewer services being offered. (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 567-568.)

Cause Exists to Give Notice to Certain Employees

8. As a result of the Governing Board's lawful reduction of particular kinds of service, cause exists under the Education Code for the District to give final notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2011-2012 school year.

Determination

9. The charges set forth in the Accusation were sustained by the preponderance of the evidence except as otherwise stated herein. The adoption of Resolution No. 31-03-11 was related to the welfare of the District and its pupils. The District made necessary assignments and reassignments in such a manner to ensure that no permanent or probationary employee with less seniority than any employee identified hereafter is being retained to render a service that the identified employees are certificated and competent to render.

RECOMMENDATION

It is recommended that the Governing Board of the Calexico Unified School District issue final notices to the following certificated employees: Antonio Buenrostro Zepeda; Anel Bustamante; Hector Joshua Cabrera; Kristina Costa; Leticia Cota; Silvia F. Covarrubias; Julie M. Fernandez; Roberto O. Gutierrez; Pollavet Hansanugrum; Delia Susana Hurtado; Jorge Jimenez; Eric Lopez; Karla Magallanes; Josefina Mercado Cortez; Claudia Meza; Jesus Antonio Ochoa; Eliza Pereda; Yordan Rivera; Lorena D. Rodriguez; Cynthia Salgado; Maria Elena Paola Sanchez-Romero; Cherie Kay Shook; Alfredo R. Silva; Martha Torres; and Nifa Vega.

DATED: April 29, 2011

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings